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BEFORE THE

Federal Communications Commission

MAY 15 1997

WASHINGTON, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Claremore and Chelsea, Oklahoma)

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MM Docket No. 95-167
RM-8699

To: Chief, Allocations Branch:

PETITION FOR PARTIAL RECONSIDERATION

Brite-Star Broadcasting ("Brite-Star") herein petitions for partial reconsideration of the Report and Order, DA 97-582, released in the above-captioned docket on March 28, 1997.¹ Brite-Star does not question the reallocation of Channel 264A from Claremore to Chelsea, Oklahoma. It does challenge, however, the modification of the construction permit for Station KTFR to specify Chelsea as its community of license. In support of this petition, the following is stated:

In a footnote to the Report and Order, the Chief, Allocations Branch, concluded that the issue raised by Brite-Star (i.e., whether Michael P. Stephens ("Stephens") was the holder of a valid construction permit for Station KTFR) was moot because the Audio Services Division had granted Stephens a six-month extension of time to complete construction of Station KTFR.

¹ The Report and Order was published in the Federal Register April 3, 1997 (62 Fed. Reg. 15858). Therefore, this petition is timely filed. 47 C.F.R. §§ 1.429(d); 1.4(b)(1) and 1.4(j).

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In fact, the issue raised by Brite-Star is not moot. On March 26, 1997, Brite-Star filed a timely Application for Review of the grant of Stephens' extension application.² Because the Report and Order was adopted March 19, 1997, the Allocations Branch obviously was unaware that the validity of Stephens' construction permit was still under challenge. Accordingly, it is appropriate to bring that fact to the staff's attention through a petition for reconsideration. 47 C.F.R. §1.429(b)(1).

Moreover, Brite-Star, as an "interested person," may file a petition for reconsideration. 47 C.F.R. §1.429(a). Its sole proprietor, George Ballew, will be adversely affected by the modification of Stephens' construction permit to specify Chelsea as KTFR's community of license.³ Only after the record closed in this proceeding did Mr. Ballew become aware that Stephens' construction permit for KTFR had not been extended. Upon learning that a question existed as to the continuing validity of Stephens' underlying construction permit, Brite-Star promptly brought the matter to the attention of the Allocations Branch.⁴ If given the opportunity, Brite-Star's principal, Mr. Ballew, will file an application for the allotment in question and, if a construction permit is granted, will promptly build the station.

² Stephens filed an opposition on April 10, 1997, to which Brite-Star replied on April 23, 1997.

³ The fact Mr. Ballew is the sole proprietor is set forth in the above-referenced Application for Review, which is supported by Mr. Ballew's declaration.

⁴ At the time, Brite-Star filed the "Motion for Leave to File Comments and Comments" (July 11, 1996), the FCC's records gave no indication that an application for extension of the KTFR construction permit had been filed. In fact, Stephens had filed such an application but the Commission, apparently, had misplaced it. The application eventually was resubmitted and accepted nunc pro tunc. Thereafter, on August 22, 1996, Brite-Star filed an informal objection to the extension application (BMPH-960205JZ). Stephens filed an Opposition October 4, 1996 to which Brite-Star replied on October 28, 1996.

3.

Through this petition Brite-Star urges the Allocations Branch to hold in abeyance that portion of the Report and Order that modifies Stephens' construction permit for Station KTFR to specify Chelsea as its community of license. If grant of Stephens' extension application for KTFR becomes final, then, and only then, would it be appropriate to modify his construction permit to change the station's city of license. But, if Stephens' extension application ultimately is denied and the KTFR construction permit cancelled, the Allocations Branch should open a filing window for Channel 264A at Chelsea.

In light of the circumstances present, Brite-Star Broadcasting respectfully requests that its Petition for Partial Reconsideration be GRANTED and that those portions of the Report and Order modifying Stephens' construction permit for Station KTFR to specify Chelsea, Oklahoma as its community of license be HELD IN ABEYANCE pending final disposition of Stephens' application for extension of the KTFR construction permit.

BRITE-STAR BROADCASTING

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May 5, 1997


CERTIFICATE OF SERVICE

I, Pamela R. McKethan, hereby certify that on this 5th day of May, 1997, copies of the foregoing **PETITION FOR PARTIAL RECONSIDERATION** were hand-delivered or mailed, first class, postage prepaid, to the following:

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